

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

Pedro R. Duarte,  
 Petitioner

v.

Brian Williams, *et al.*,  
 Respondents

Case No.: 2:12-cv-01305-JAD-EJY

**Order Granting Conditional Writ of  
 Habeas Corpus on Remand from the  
 United States Court of Appeals for the  
 Ninth Circuit**

[ECF No. 96.]

Petitioner Pedro R. Duarte sought a writ of habeas corpus under 28 U.S.C. § 2254 based, in part, on claims that his trial counsel was ineffective.<sup>1</sup> I denied Duarte's petition, and this case was closed on September 30, 2019.<sup>2</sup> Duarte appealed, and the United States Court of Appeals granted a certificate of appealability on one ground: whether he demonstrated cause and prejudice to excuse the procedural default of his claim that his trial counsel rendered ineffective assistance by failing to challenge the co-conspirator or aider-and-abettor liability jury instruction.<sup>3</sup> The United States Court of Appeals has now determined that Duarte's underlying ineffective-assistance claim is meritorious and that his procedural default is excused under *Martinez v. Ryan*, 566 U.S. 1 (2012).<sup>4</sup> Accordingly, the United States Court of Appeals remanded this case "with instruction to grant a conditional writ of habeas corpus ordering Duarte to be resentenced unless the State of Nevada retries him on the attempt murder counts within a reasonable period of time."<sup>5</sup> In accordance with the United States Court of Appeals' memorandum, I grant a conditional writ of habeas corpus.

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<sup>1</sup> ECF No. 47.

<sup>2</sup> ECF Nos. 91, 92.

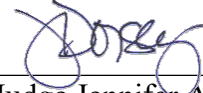
<sup>3</sup> ECF Nos. 93, 96 at 3.

<sup>4</sup> ECF No. 96 at 8–9.

<sup>5</sup> *Id.* at 9.

1 IT IS THEREFORE ORDERED that **A CONDITIONAL WRIT OF HABEAS**  
2 **CORPUS IS GRANTED.** The State of Nevada is directed to resentence Duarte unless it  
3 **retries him on the attempt-murder counts within 120 days of the date this order is filed.**

4 Dated: October 25, 2021



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6 U.S. District Judge Jennifer A. Dorsey